

CASE NO.

VOLUME

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Cite as: Fraser v. Westminer Canada Ltd., 1998 NSCA 141

SUMNER M. FRASER, WILLIAM KITCHEN, WILLIAM MUNDLE and DR. JAMES COLLINS in their personal capacities and as representatives of certain investors in Cavalier Energy Limited (successor to Cavalier Capital Corporation) being all those investors provided irrevocable unconditional letters of credit or letters of guarantee prior to August 2, 1988 to support a 15 million dollar borrowing by Cavalier Capital Corporation

- and -

WESTMINER CANADA LIMITED, WESTMINER HOLDINGS LIMITED, WESTERN MINING CORPORATION HOLDINGS LIMITED, JAMES H. LALOR, PETER MALONEY, WILLIAM B. BRAITHWAITE and COLIN WISE

(Appellants)

(Respondents)

C.A. No. 146559

Halifax, N.S.

CROMWELL, J.A.
(orally)

APPEAL HEARD:

June 2, 1998

JUDGMENT DELIVERED:

June 2, 1998

WRITTEN RELEASE OF ORAL:

SUBJECT: **Trials - Severance of Issues for Trial - Discretionary Order of Case Management Judge**

SUMMARY: The appellants - plaintiffs applied to the Case Management Judge in the Supreme Court for an order under **Rule 28.04** that certain issues be tried before all other issues in the action and that discovery of witnesses and further document production be limited to those issues until after they are tried. The Case Management Judge dismissed the application and the appellants sought leave to appeal that dismissal.

ISSUE: Should the appellants be granted leave to appeal the discretionary order of the Case Management Judge concerning the orderly progress of the litigation?

RESULT: Leave to appeal denied. This was an interlocutory application and the order sought was discretionary. The Court of Appeal will not intervene unless persuaded that the Chambers judge applied wrong principles of law or the result of the order is a patent injustice. Where, as here, the application relates to the orderly progress of the litigation and the judge

is the Case Management Judge, these limitations on appellate intervention are particularly apt. Not being persuaded that the Chambers judge erred in principle or that his order gave rise to an injustice, the application for leave to appeal was dismissed.

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DECISION, QUOTES MUST BE FROM THE DECISION, NOT FROM THE COVER
SHEET. THE FULL COURT DECISION CONSISTS OF 2 PAGES.**